XI-HC—78

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Criminal Appeal No.2950 of 1999	
	APPELLANTS:	1. Bharatlal, Son of Dhajaram Sahu, aged 22 years, ...Accused No.6 2. Balram @ Balaram Sahu, aged 42 years, Son of Pilaram Sahu .....Accused No.9 3. Tukeshwar @ Baratlal Sahu, aged 19 years, ...Accused No.10 4. Kaleshwar @ Bhuneshwar, son of Bharatlal Sahu, aged 19 years .....Accused No.11 5. Sethi @ Sitambar, son of Hemlal Sahu, aged 18 years .....Accused No.12 6. Pitambar, son of Hemlal Sahu, aged 19 years, ...Accused No.13 7. Amgaheen @ Janki Bai, Wife of Hemlal Sahu, aged 37 years .....Accused No.15 Note: All residents of village Taldeori, P.S. Jaijaipur, District Bilaspur (MP) (Now Chhattisgarh)
		- Versus -
	RESPONDENT:	State of Madhya Pradesh (Now Chhattisgarh), Through: P.S. Jaijaipur, Distt. Bilaspur (MP) (Now Chhattisgarh).

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Criminal Appeal No.3173 of 1999	
	APPELLANTS: (In Jail)	1. Sukhsagar Sahu, S/o Tilakram Sahu, aged about 45 years.
		2. Tekram, S/o Premsagar, aged about 20 years.
		3. Raj Kumar, S/o Premsagar,
		4. Hem Charan, S/o Tilakram Sahu, aged about 26 years.
		5. Premsagar, S/o Tilakram, aged about 45 years. (Accused No.22)
	APPELLANTS: (on bail)	6. Savitri Bai, D/o Premsagar, aged about 25 years. (Accused No.14)
		7. Devrahin Bai @ Rachna, W/o Sukh Sagar, Sahu, aged about 45 years
		All residents of village Taldeori, P.S. Jaijaipur, District Bilaspur (MP) (Now Chhattisgarh)
	-Versus-	
	RESPONDENT:	The State of Madhya Pradesh (Now Chhattisgarh),
	AND	
	Criminal Appeal No.1450 of 2000	
	APPELLANT:	Sunderlal, son of Dhajaram Sahu, aged about 22 years, resident of village Taldeori, P.S. Jaijaipur, District Bilaspur (MP) (Now Chhattisgarh)
	-Versus-	

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RESPONDENT: The State of Madhya Pradesh (Now Chhattisgarh), through P.S. Jaijaipur, District Bilaspur, (MP) (now Chhattisgarh)

(Appeal under Section 374 (2) of the Code of Criminal Procedure, 1973)

Division Bench: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

3-5-2007:-

Smt. Hamida Siddique, counsel for the appellants in Cr.A. No.3173/99 and for appellant Nos.5 to 7 in Cr.A.No.2950/99.

Miss Sharmila Singhai, counsel for the appellants No.1, 3 and 4 in Cr.A. No.2950/99.

Shri Govindram Miri, counsel for the appellant No.2 in Criminal Appeal No.2950/99.

Shri Abhay Tiwari, counsel for the appellant in Cr.A. No.1450/2000.

Shri U.N.S. Deo and Shri D.K. Gwalre, Additional Public Prosecutors for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

The aforesaid appeals filed by Bharatlal, Balram @ Balaram Sahu, Tukeshwar @ Baratlal Sahu, Kaleshwar @ Bhuneshwar, Sethi @ Sitambar, Pitambar, Amgaheen @ Janki Bai; Sukhsagar Sahu, Tekram, Raj Kumar, Hem Charan, Prem Sagar, Savitri Bai, Devrahin Bai @ Rachna; and Sunderlal, respectively, are being disposed of by this

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

common judgment, as these appeals are arising out of the same judgment.

By these appeals under Section 374 (2) Cr.P.C. the accused/ appellants have questioned legality and correctness of the judgment of conviction and order of sentence dated 13-10-99 passed by the Additional Sessions Judge, Sakti, in S.T. No.81/95 whereby learned Additional Sessions Judge after holding accused/appellants namely, Sukhsagar, Tekram, Raj Kumar, Sunderlal, Prem Sagar & Hem Charan guilty for commission of offence under Sections 302/149, 326/149 & 148; accused Bharatlal & Kaleshwar under Sections 302/149 and 148 of the I.P.C.; accused Sethi @ Sitambar & Pitambar under Sections 302/149 & 148 of the I.P.C. and accused Tukeshwar, Devrahin Bai, Amgaheen, Savitri & Balaram for commission of offence under Sections 148 of the I.P.C., sentenced each of the accused to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year under Section 302/149 of the I.P.C., to undergo R.I. for 3 years & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 3 months under Section 326/149 of the I.P.C. and to undergo R.I. for one year under Section 148 of the I.P.C..

Admitted facts of the prosecution case are that deceased Dular Sai and Tara Bai were residents of village Taldeori. The accused persons were having animosity against the deceased persons and complainant party because daughter of accused Prem Sagar namely, Savitri was not being sent to her matrimonial house, therefore, a meeting of Sahu Samaj was convened, in that meeting, Prem Sagar was asked to send his

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daughter to the matrimonial house. When he did not accede to the decision of Samaj, he was ostracized by the Samaj. The complainant party did not help accused Prem Sagar. Further ground of animosity was that accused Roop Singh lodged a report against Johan and others for commission of offence under Sections 452, 147, 148, 294, 325 and 506 of the I.P.C., for which a criminal case No.642/97 was pending.

Further case of the prosecution, in brief, is that at about 6.30 a.m. in the morning of 25-7-94 Dular Sai along with his son Johan went to take bath in a pond (Bade Talab) of village Taldeori. After taking bath, Dular Sai was going to temple of Mata Choura, at that time, the accused persons appeared on the scene of occurrence carrying lathi, battle axe, axe and sickle in their hands and started beating Dular Sai, as a result of which he succumbed to the injuries spontaneously. The accused persons also attacked Tara Bai, as a result of which she also sustained injuries. While she was being taken to the hospital, on the way, Tara Bai died. When Gangaram, Radha Bai, and Bahadur came on the scene, they were also attacked by the accused persons. Johan was also attacked. He ran away and lodged report Ex.-P/4 in the police station Jaijaipur which was registered at S. No.78/94 for commission of offence under Sections 302 and 307 of the I.P.C. Chamar Das Kotwar (PW-9) gave merg intimation Ex.-P/8 in connection with death of Dular Sai and Tara Bai.

After registering the crime, the Investigating Officer left for scene of occurrence, after giving notice Ex.-P/5 to the Panchas, prepared inquest Ex.-P/6 on the body of Dular Sai. The I.O. after giving notice Ex.-P/52 to the Panchas, prepared inquest Ex.-P/53 on the body of Tara Bai. The

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

body of Dular Sai was sent for postmortem examination to the Primary Health Centre, Jaijaipur under Ex.-P/54 where Dr. N.P. Mishra (PW-19) conducted postmortem, prepared report Ex.-P/82. He opined that cause of death of Dular Sai, aged 60 years, was shock due to excessive haemorrhage, as a result of injuries on the body of Dular Sai. Death was homicidal in nature. The body of Tara Bai was sent for postmortem to the B.D.M. Hospital, Champa, under Ex.-P/59 where Dr. V.K. Agrawal, (PW-18) conducted postmortem, prepared report Ex.-P/81. He opined that cause of death was shock due to excessive haemorrhage as a result of injuries to the bones of both lower legs. Injured witnesses namely, PW-8 Gangaram, PW-20 Radha Bai and Bahadur were sent for examination of the injuries sustained by them in the same incident. Their injuries were examined by Dr. N.P. Gupta (PW-22). Injury reports Ex.-P/84, Ex-P/85 and Ex.-P/86 were prepared in respect of Gangaram, Radha Bai and Bahadur. The doctor advised for X-ray of the above 3 injured persons. After X-Ray it was found that Gangaram had sustained boney injury.

Based on the memorandum Ex.-P/1 of Prem Sagar one Kalari was recovered at his instance under Ex.-P/2. Based on memorandum Ex.-P/9 of Sukhsagar lathi was seized at his instance under Ex.-P/29. Based on memorandum Ex.-P/10 given by Raj Kumar sword was seized at his instance under Ex.-P/30. Based on memorandum Ex.-P/11 given by Tekram one Bhujali was seized at his instance under Ex.-P/31. Based on memorandum Ex.-P/12 given by Hem Charan lathi was seized at his instance under Ex.-P/34. Based on memorandum Ex.-P/13 given by Hemlal lathi was seized at his instance under Ex.-P/35. Based on memorandum Ex.-P/14 given by Tuneshwar axe was seized at his

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instance under Ex.-P/36. Based on memorandum Ex.-P/15 given by Roop Singh lathi was seized at his instance under Ex.-P/33. Based on memorandum Ex.-P/16 given by Sunderlal battle axe was seized at his instance under Ex.-P/32. Based on memorandum Ex.-P/17 given by Devraheen sickle was seized at her instance under Ex.-P/39. Based on memorandum Ex.-P/18 given by Savitri sickle was seized at her instance under Ex.-P/37. Based on memorandum Ex.-P/18 given by Sethi lathi was seized at his instance under Ex.-P/40. Based on memorandum Ex.-P/19 given by Amgaheen sickle was seized at her instance under Ex.-P/38. Based on memorandum Ex.-P/21 given by Bala @ Balram lathi was seized under Ex.-P/41. Based on memorandum Ex.-P/22 given by Bharatlal lathi was seized at his instance under Ex.-P/42. Based on memorandum Ex.-P/23 given by Pitambar lathi was seized at his instance under Ex.-P/43. Based on memorandum Ex.-P/24 given by Kaleshwar lathi was seized at his instance under Ex.-P/44. Under Ex.-P/25 one pair of plastic shoe, one brass tumbler, one underwear, one sando baniyan were seized from the place of occurrence. One Lungi, one Chaddar, plain soil and blood stained soil were seized under Ex.-P/26 from the place of occurrence. Blood stained soil and plain soil was also seized under Ex.-P/27 from the place of occurrence. Site plan Ex.-P/50 of the place of occurrence was prepared by the I.O.

After completion of investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate, 1st Class, Sakti, who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

In order to establish charges against the accused persons the prosecution examined 31 witnesses at the trial. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied material appearing against them in the prosecution evidence. They stated that they are innocent and have been falsely implicated on account of animosity. Accused Balaram apart from denying material appearing against him in the prosecution evidence, pleaded innocence. He took a plea of alibi that at the time of the incident he was working as postman at Sakti since last 20 years. As death was taken place in the house in which he was residing, therefore, body was lying there. They examined 12 witnesses in his defence.

Learned Additional Sessions Judge after hearing arguments of learned counsel for the respective parties, convicted and sentenced the accused persons as aforesaid. However, acquitted Badgadheen @ Teejmati Bai, Birraheen @ Dhaneshwari Bai, Parsadiheen @ Rat Bai, Kahrodheen Bai @ Bisaheen Bai, Kashdigadhheen @ Pandari Bai and Annapurna. Accused Sukhiram and Balram @ Guddu were absconding. After the judgment in this case, accused Balram @ Guddu was apprehended and he faced trial separately. Accused Sukhiram is still absconding.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellants have not disputed homicidal death of Dular Sai and Tara Bai. Moreover, eyewitnesses namely, PW-1 Rohan, PW-2 Johan, PW-3 Loknath, PW-4 Suresh Kumar,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

PW-5 Lakheshwari Bai, PW-6 Ghasiya, PW-12 Mehattar Lal, PW-16 Sukhiram, PW-27 Budhdhuram, PW-29 Bahartaram & PW-24 Tularam @ Kallu as also injured witnesses namely, PW-8 Gangaram and PW-20 Radha Bai have stated that deceased persons namely Dular Sai and Tara Bai died on account of injuries inflicted by the accused persons. Dr. N.P. Mishra (PW-19) and Dr. V.K. Agrawal (PW-18), who conducted postmortem on the bodies of the deceased persons, have stated that the death of Dular Sai and Tara Bai was homicidal in nature. Therefore, in view of the above ocular and medical evidence, it is established that death of Dular Sai and Tara Bai was homicidal in nature.

Sukhsagar, Tekram, Raj Kumar, Sunderlal, Hem Charan, Bharat Lal, Kaleshwar, Sethi @ Sitambar, Pitambar and Prem Sagar

As far as involvement of the above accused/appellants in the crime in question is concerned, main witness PW-3 Loknath Patel, who is an independent eyewitness and whose house is in front of the place of occurrence, has stated that on the fateful day in between 6.30 to 7.15 a.m. he was sitting in front of his house, at that time, he saw that Dular Sai after taking bath in a pond went towards temple of 'Durga Maa'. After removing his shoes, he was climbing the steps of the temple carrying water in brass tumbler. After reaching temple, he was offering water on the Deity, at that time, Sukhsagar and Tekram came together. Sukhsagar attacked with lathi. He made two assaults. Dular Sai protected himself with his hands from the assault. Dular Sai started retreating came on the land, at that time, accused Prem Sagar, Hem Charan, Hemlal, Raj Kumar, Balram, Pitambar, Sethi, Sunderlal and Roop Singh started attacking Dular Sai,

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among them Sukh Sagar was having lathi, Tekram was having Bhujali, Raj Kumar was having Khada, Prem Sagar was having Kalari, Sunderlal was having Tabbal and remaining persons were having lathis. Thereafter, he entered his house. After 10-15 minutes, he came out and saw that body of Dular Sai was lying. There were injuries. Gangaram was also standing in injured condition. In the mean time, wife of Dular Sai came. She was weeping. Tara Bai was lying in unconscious condition. There were injuries on her leg. Blood was oozing out of the injuries. There were injuries on the body of husband of Tara Bai. Villagers were standing there, among them were Suresh, Sukhiram, Lakheshwari and others also there. Panchnama Ex.-P/6 was prepared in his presence. Evidence of this witness is corroborated by the evidence of PW-2 Johan, son of Dular Sai. He has stated that he was also with his father at the time when attack was made. In para-3 of his evidence, he has stated that on the leg and hand of Tara Bai accused Sukh Sagar, Hem Charan, Raj Kumar, Tekram and Sunderlal attacked, as a result of which she fell down. They twisted her leg. Evidence of these witnesses is corroborated in material particulars by the evidence of PW-4 Suresh, PW-16 Sukhiram, PW-21 Raj Kumar, PW-27 Budhdhuram, PW-29 Bahartaram Sahu, PW-1 Rohan, PW-5 Lokeshwari Bai, PW-6 Ghasiya, PW-12 Mehattar Lal, PW 24 Tula Ram @ Kallu, among them PW-8 Ganga and PW-20 Radha are injured witnesses who sustained injuries in the same incident.

Learned counsel for the accused/appellants could not point out any infirmity in the evidence of these witnesses so as to discredit their evidence regarding involvement of the above accused/appellants in the crime in question. As has been mentioned that out of these witnesses,

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

PW-8 Ganga and PW-20 Radha are injured witnesses. PW-3 Loknath is an independent witness whose house is existing in front of the place of occurrence. Therefore, their presence at the place of occurrence is established by the fact that there are two injured witnesses. PW-2 Johan was accompanying his father and Loknath's house is existing just opposite the place of occurrence, therefore, we find no reason to come to a different conclusion than the conclusion arrived at by the trial Court regarding involvement of these persons in the crime in question. Moreover, from perusal of the evidence of prosecution witnesses, it is established that in the first instance accused Sukhsagar and Tekram carrying weapon came on the scene, in the meantime, other accused persons joined them. Therefore, the manner in which all the above accused persons assembled at the scene of occurrence armed with deadly weapons and started beating Dular Sai & Tara Bai establishes their common object to attack Dular Sai and Tara Bai. It is settled law that common object can be formed at the spur of moment at the time of commission of crime also, therefore, they have been rightly held guilty with the aid of Section 149 of the I.P.C.

Learned counsel for the accused/appellants argued that injuries inflicted on the bodies of Dular Sai and Tara Bai were on non-vital parts i.e. no injury was on the head of both the deceased persons and no other grievous injury was on the vital organ of the deceased persons i.e. chest, stomach and neck. Learned counsel for the accused/appellants while drawing attention of the Court towards postmortem reports and evidence of Dr. N.P. Mishra (PW-19) and Dr. V.K. Agrawal (PW-18) argued that all the injuries were on hands and legs, therefore, it cannot be said that the

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accused persons attacked the deceased persons with intention to cause death. They further argued that in the circumstances their conviction under Section 302 read with Section 149 of the I.P.C. is not based on legal evidence. The offence against the accused/appellants does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned counsel for the State/respondent supported judgment of the trial Court and argued that as per the evidence of PW-1 Rohan the accused persons were shouting that they should not be left alive.

In order to appreciate arguments advanced by learned counsel for the parties, we have perused postmortem reports, evidence of the doctors as well as eyewitnesses. Perusal of the injury report and evidence of the doctors reveal that as far as Tara Bai is concerned, all the injuries were on her leg and thigh. As far as Dular Sai is concerned, all the injuries were on legs and hands. There were one or two bruises on the chest. Had the accused persons were having intention to cause death of these two persons, they were carrying deadly weapons with which they assaulted two victims, nothing prevented them to attack on head and other vital organ of the deceased persons. Moreover, Dr. V.K. Agrawal (PW-18) has not stated in his evidence that injuries inflicted on the body of Tara Bai were sufficient in the ordinary course of nature to cause death. Dr. N.P. Mishra (PW-19) has not stated that injuries inflicted on the body of Dular Sai were sufficient in the ordinary course of nature to cause death. Looking to the injuries and parts of the bodies where injuries were inflicted, we are of the considered opinion that looking to the place of

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bodies chosen by the accused persons to attack, no inference can be drawn that they were having requisite intention to cause death of these two persons. The manner in which, weapons with which the accused persons attacked these two persons and caused boney injuries and other injuries on the legs and hands, it can safely be inferred that the accused persons had knowledge that the manner in which they are attacking Dular Sai and Tara Bai, they are likely to cause death. Therefore, offence against the accused persons was made out under Section 304 Part-II of the I.P.C. instead of Sections 302/149 of the I.P.C.. We are fortified in our view by the judgment of the Apex Court in the matter of **Adu Ram V. Mukna and others** reported in **2004 AIR SCW 5773** wherein the Apex Court held that:-

> "Number of injuries on deceased person – Not always determinative of offence – Weapon used, part of body where injuries were inflicted and nature of injuries are relevant factors – Lathis and axes used by appellants to beat deceased – Assault made in course of quarrel – Doctor who conducted post-mortem found 34 injuries including several fractures injuries – trial Court convicted appellants under Ss.302 r/w Ss.148, 149 and 341 – High Court noting fact that fracture injuries were all seen on hand and other non-vital parts of body; there was no grievous injury on head; all injuries on head were simple in nature, altered conviction to S.304, Part I – No infirmity – On facts,

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however, case held to be one covered under S.304, Part II – Custodial sentence of six years imposed."

On the same principle, if we look into nature of the injuries, postmortem reports and doctors' evidence not a single injury was inflicted by the accused persons on any vital part of the body of the deceased persons. Therefore, based on the above principle, we are of the considered opinion that offence against the accused persons under Section 304 Part II of the I.P.C. is made out, therefore, their conviction under Section 302 read with Section 149 of the I.P.C. cannot be sustained. Accused persons namely, Sukhsagar, Prem Sagar, Raj Kumar, Tekram, Hem Charan and Sunderlal have rightly been convicted under Section 326 read with Section 149 of the I.P.C. for causing grievous injuries to injured Gangaram with deadly weapons.

Devrahin Bai @ Rachna, Amgaheen @ Janki Bai and Savitri Bai

These appellants have been convicted under Section 148 of the I.P.C. because as per the prosecution case at the time of commission of offence they were armed with deadly weapon i.e. sickle.

Smt. Hamida Siddique, learned counsel for the accused/appellants, argued that similarly situated other co-accused persons namely, Badgadheen @ Teejmati Bai, Birraheen @ Dhaneshwari Bai, Parsadiheen @ Rat Bai, Kahrodheen Bai @ Bisaheen Bai, Kashdigadhheen @ Pandari Bai and Annapurna have been acquitted whereas, these 3 ladies have been convicted. She further argued that eyewitness namely, Johan, son of deceased Dular, has not mentioned in FIR Ex.-P/4 that they were

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

armed with sickle. Similarly, in his statement Ex.-D/2 under Section 161 Cr.P.C. it has not been mentioned that they were armed with sickle. The only distinction made by the trial Court is that from other co-accused ladies no recovery of weapon has been effected, therefore, they are entitled for the benefit of doubt.

On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor, supported finding of the trial Court. He also argued that since they were armed with sickle, therefore, they may also be convicted for the main offence with the aid of Section 149 of the I.P.C.

We are afraid that submission made by learned Additional Public Prosecutor is not legally tenable for the reason that ladies co-accused persons have already been acquitted, these 3 ladies accused have also been acquitted under Sections 302 read with Section 149 and 326 read with Section 149 of the I.P.C., that judgment has attained finality. No appeal has been preferred by the State against the order of acquittal passed by the trial Court. Therefore, *suo motu* this Court cannot appreciate evidence and convict the accused under Section 302 read with Section 149 of the I.P.C. In FIR the only omnibus statement has been made that all the accused persons started attacking in which similar statement was made against other co-accused lady persons who have been acquitted by the trial Court. In the first instance, all the independent witnesses namely, PW-3 Loknath, PW-4 Suresh Kumar, PW-16 Sukhiram, PW-21 Raj Kumar, PW-27 Budhdhuram and PW-29 Bahartaram have not stated that these 3 ladies co-accused persons were members of unlawful assembly and they made assault. The only relative witnesses of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

deceased have stated about their presence. Moreover, in the First Information Report Ex.-P/4 Johan has not mentioned that these 3 ladies attacked the deceased persons with sickle or they were in possession of sickle. Even PW-2 Johan in para-57 of his cross-examination has stated that he does not remember whether while giving report Ex.-P/4 he mentioned about these 3 accused persons that they used sickle while attacking the deceased persons. He has further stated that while giving police statement Ex.-D/2 he informed I.O. about the fact that these accused persons attacked the deceased persons with sickle. If same has not been recorded in his statement Ex.-D/2 he cannot explain the same. As other ladies co-accused persons have already been acquitted by the trial Court, they were on the same footing, apart from that, there is no specific allegation against these ladies accused persons in FIR and statement Ex.-D/2 of PW-2 Johan that these 3 accused persons were carrying sickle and they used sickle; moreover, independent witnesses, mentioned above, have also not stated that these 3 accused persons were members of unlawful assembly, they attacked the deceased persons with sickle or they were carrying sickle, therefore, their conviction under Section 148 of the I.P.C. cannot be sustained.

Learned Additional Public Prosecutor argued that PW-1 Rohan, PW-2 Johan, PW-5 Lakheshwari Bai, PW-6 Ghasiya, PW-12 Mehattar Lal, and PW-24 Tularam @ Kallu have stated about their presence and their evidence merely being relative of the deceased persons cannot be rejected.

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आदेश पत्रक (पूर्वानुबद्ध)

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It is true that evidence of relative witnesses cannot be rejected outrightly being relative of the victim but settled law is that evidence of relative witnesses has to be scrutinized with care and circumspection. If evidence of these relative witnesses is scrutinized with evidence of independent witnesses, independent witnesses have not stated about their presence at the scene of occurrence. Even PW-2 Johan has not specifically stated that these 3 ladies accused persons attacked with sickle or they were carrying sickle. Therefore, to this extent, evidence of relative witnesses becomes doubtful and is not fully reliable, as such, these 3 accused persons are entitled for the benefit of doubt. Their conviction under Section 148 of the I.P.C. cannot be sustained.

Tukeshwar @ Baratlal Sahu

Miss Sharmila Singhai, learned counsel for the accused/appellant argued that as far as conviction of this accused under Section 148 of the I.P.C. is concerned, independent witnesses as well as relative witnesses except PW-20 Radha and PW-24 Tula Ram @ Kallu have not stated about presence of this accused at the scene of occurrence as also participation in the crime in question. Even PW-20 Radha and PW-24 Tula Ram @ Kallu have stated that the accused was standing there carrying lathi in his hand whereas, I.O. has recovered axe at the instance of the accused, therefore, his conviction under Section 148 of the I.P.C. cannot be sustained.

On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor, supported the judgment of the trial Court.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Argument of learned counsel for the accused/appellant has merit because except PW-20 Radha and PW-24 Tula Ram @ Kallu no other independent or relative witnesses have stated regarding presence or participation of this accused in the crime in question. In the evidence of PW-20 Radha and PW-24 Tula Ram @ Kallu, it has come that the accused attacked with lathi whereas, axe was recovered from the accused. In the first instance, no independent witnesses have stated anything about presence of this accused. Moreover, even relative witnesses have not stated, evidence of these two witnesses is contradictory on the point of weapon the accused was carrying because they have stated that accused was carrying Lathi whereas, axe was recovered from this accused, as such, there is no legal and clinching evidence on record to establish presence of this accused on place of occurrence and that he was member of unlawful assembly and that he was carrying deadly weapon, as such, we are of the considered opinion that this accused is also entitled for benefit of doubt. His conviction under Section 148 of the I.P.C. cannot be sustained.

Balram @ Balaram

This accused has also been convicted and sentenced under Section 148 of the I.P.C.

Shri Govindram Miri, learned counsel for the accused/appellant, argued that on the fateful day Balram @ Balaram was posted as postman at Sakti which is at a distance of 60-70 km from village Taldeori. He was on duty right from 9 a.m. as per the evidence given by his officer. Apart from that, in the night of 24-7-94 the accused was at his residence. On

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that day wife of Usman Ali had expired and body was at the residence. His Landlord has stated that Balram @ Balaram was with him and he was watching body whole night along with him. He further argued that PW-3 Loknath, independent witness, has specifically stated in his evidence that Balram @ Balaram was not present at the scene of occurrence. PW-4 Suresh Kumar, PW-16 Sukhiram, PW-21 Raj Kumar and PW-24 Tularam have specifically stated that he was not present on the scene of occurrence.

On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor supported the judgment of the trial Court. He argued that evidence of defence witnesses to the effect that the accused was on duty has been disbelieved.

In order to appreciate argument advanced by learned counsel for the respective parties, we have scrutinized evidence available on record. It is admitted position that accused Balram @ Balaram, at the relevant time, was working as postman and his posting was at Sakti. PW-3 Loknath, independent witness, in para-41 of his evidence, has stated that accused Balram is working as postman at Sakti. In his evidence he has stated that Balram who was present at the scene of occurrence is not present in the Court. Accused Balram, who is present in the Court, was not at the place of occurrence at the time of commission of crime. PW-4 Suresh Kumar, in para-25 of his evidence, has stated that he did not see accused Balaram present in the Court at the place of occurrence at the time of commission of crime. However, other accused Balram was present. PW-21 Raj Kumar, in para-10 of his evidence, has stated that

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he did not see Balram. Balram is known to him. Balram whose name has been taken, is not present in the Court today whereas, the accused/appellant was present in the Court on the day of evidence of this witness. Therefore, this witness has also referred Balram and not Balaram (appellant). PW-24 Tularam in para-54 of his evidence has stated that the person whose name he has referred in his evidence is not present in the Court today. Therefore, above prosecution witnesses have specifically stated that the accused/appellant was not present at the scene of occurrence at the time of commission of crime. Therefore, we have to appreciate evidence of defence witnesses with evidence of these prosecution witnesses.

D.W.-1 R.P. Nirmalkar has stated that on 25-7-94 accused Balram came on duty in the post office at Sakti. DW-2 Guharam Chouhan, male overseer, has also stated that Balram was on duty from 9 a.m. to 5 p.m. DW-3 Usman Ali has stated that in the Sunday night i.e. 24-7-94 his wife had expired. The accused was his tenant, therefore, in the night of 24-7-94 the accused was with him at his residence along with one Girvar who was working in the rest house. At about 8 a.m. Balram left saying that he is going on duty. DW-7 Nisar Ullah, who was also residing in the same house as tenant, has also corroborated the above evidence.

The trial Court has rejected evidence of these witnesses on the ground that no attendance register was produced. We have appreciated evidence of these witnesses along with evidence of the prosecution witnesses, which has been referred earlier. They have specifically stated that accused/appellant was not present at the place of occurrence at the

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आदेश पत्रक (पूर्वानुबद्ध)

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time of commission of crime. Other accused Balram was there. If evidence of defence witnesses is appreciated along with evidence of the prosecution witnesses, particularly, landlord Usman Ali has specifically stated that in the night of 24-7-94 the accused was present at his residence. DW-5 Girvar Ram has stated that he did not see the accused in the night of 24-7-94 but he has admitted that wife of landlord had expired on that night. This witness has not specifically stated that in the said night he was with the landlord near body of the wife of landlord whereas, landlord has stated that the accused was with him in the said night. Even if defence evidence is not sterling worth about presence of the accused at Sakti in the said night but the prosecution witnesses have specifically stated that the accused was not present at the scene of occurrence at the time of commission of crime. Even though PW-27 Budhdhuram has stated that the accused was present but other prosecution witnesses, as mentioned above, have specifically stated that the accused was not present at the place of occurrence, therefore, in the circumstances, the prosecution has not been able to establish with clinching and legal evidence presence of this accused at the place of occurrence beyond reasonable doubt, therefore, this accused is also entitled for benefit of doubt, as such, his conviction under Section 148 of the I.P.C. cannot be sustained.

In the result, for the foregoing reasons:-

(1) Criminal Appeal No.2950/99 filed by Balram @ Balaram, Tukeshwar @ Baratlal Sahu & Amgaheen @ Janki Bai and Criminal Appeal No.3173/99 filed by Savitri Bai & Devrahin Bai @

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आदेश पत्रक (पूर्वानुबद्ध)

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Rachna are allowed. Their conviction under Section 148 of the I.P.C. and sentence imposed upon them under that Section are set aside. They are acquitted of the said charge. All of them are on bail. Their bail bonds are discharged.

(2) Conviction of accused/appellants Bharat Lal, Kaleshwar, Sethi @ Sitambar & Pitambar (Cr.A. No.2950/99); Sukhsagar, Tekram, Raj Kumar, Hem Charan, & Prem Sagar (Cr.A. No.3173/99) and Sunderlal (Cr.A. No.1450/2000) under Section 302 read with Section 149 of the I.P.C. and sentence imposed upon them under that Section are set aside. They are acquitted of the said charge. Instead thereof, they are convicted under Section 304 Part-II read with Section 149 of the I.P.C. and sentenced to undergo R.I. for 10 years. Conviction and sentence of accused/appellants Sukhsagar, Tekram, Raj Kumar, Sunderlal, Hem Charan and Prem Sagar under Section 326 read with Section 149 of the I.P.C. are maintained. The accused persons are said to be in detention during trial for some period and thereafter from the date of judgment i.e. 13-10-99 till today. They shall be entitled for set off of their detention period against the sentence imposed upon them.

(3) Conviction and sentence of Sukhsagar, Prem Sagar, Sunderlal, Tekram, Bharatlal, Pitambar, Kaleshwar @ Bhuneshwar, Sethi @ Sitambar, Raj Kumar, Hem Charan, Hemlal and Roop Singh under Section 148 of the I.P.C. are also maintained.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Balve